

## Federal Labor Relations Authority

## § 2424.2

### § 2423.42 Backpay proceedings.

After the entry of an Authority order directing payment of backpay, or the entry of a court decree enforcing such order, if it appears to the Regional Director that a controversy exists between the Authority and a Respondent regarding backpay that cannot be resolved without a formal proceeding, the Regional Director may issue and serve on all parties a notice of hearing before an Administrative Law Judge to determine the backpay amount. The notice of hearing shall set forth the specific backpay issues to be resolved. The Respondent shall, within 20 days after the service of a notice of hearing, file an answer in accordance with § 2423.20. After the issuance of a notice of hearing, the procedures provided in subparts B, C, and D of this part shall be followed as applicable.

§§ 2423.43–2423.49 [Reserved]

## PART 2424—NEGOTIABILITY PROCEEDINGS

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AUTHORITY: 5 U.S.C. 7134.

SOURCE: 63 FR 66413, Dec. 2, 1998, unless otherwise noted.

### Subpart A—Applicability of This Part and Definitions

#### § 2424.1 Applicability of this part.

This part is applicable to all petitions for review filed after April 1, 1999.

#### § 2424.2 Definitions.

In this part, the following definitions apply:

(a) *Bargaining obligation dispute* means a disagreement between an exclusive representative and an agency concerning whether, in the specific circumstances involved in a particular case, the parties are obligated to bargain over a proposal that otherwise may be negotiable. Examples of bargaining obligation disputes include disagreements between an exclusive representative and an agency concerning agency claims that:

(1) A proposal concerns a matter that is covered by a collective bargaining agreement; and

(2) Bargaining is not required over a change in bargaining unit employees' conditions of employment because the effect of the change is *de minimis*.

(b) *Collaboration and Alternative Dispute Resolution Program* refers to the Federal Labor Relations Authority's program that assists parties in reaching agreements to resolve disputes.

(c) *Negotiability dispute* means a disagreement between an exclusive representative and an agency concerning the legality of a proposal or provision. A negotiability dispute exists when an exclusive representative disagrees with an agency contention that (without regard to any bargaining obligation dispute) a proposal is outside the duty to bargain, including disagreement with an agency contention that a proposal is bargainable only at its election. A negotiability dispute also exists when an exclusive representative disagrees with an agency head's disapproval of a provision as contrary to law. A negotiability dispute may exist where there is no bargaining obligation dispute. Examples of negotiability disputes include disagreements between an exclusive representative and an agency concerning whether a proposal or provision:

(1) Affects a management right under 5 U.S.C. 7106(a);

(2) Constitutes a procedure or appropriate arrangement, within the meaning of 5 U.S.C. 7106(b)(2) and (3), respectively; and

(3) Is consistent with a Government-wide regulation.

(d) *Petition for review* means an appeal filed with the Authority by an exclusive representative requesting resolution of a negotiability dispute. An appeal that concerns only a bargaining obligation dispute may not be resolved under this part.

(e) *Proposal* means any matter offered for bargaining that has not been agreed to by the parties. If a petition for review concerns more than one proposal, then the term includes each proposal concerned.

(f) *Provision* means any matter that has been disapproved by the agency head on review pursuant to 5 U.S.C. 7114(c). If a petition for review concerns more than one provision, then the term includes each provision concerned.

(g) *Service* means the delivery of copies of documents filed with the Authority to the other party's principal bargaining representative and, in the case of an exclusive representative, also to the head of the agency. Compliance with part 2429 of this subchapter is required.

(h) *Severance* means the division of a proposal or provision into separate parts having independent meaning, for the purpose of determining whether any of the separate parts is within the duty to bargain or is contrary to law. In effect, severance results in the creation of separate proposals or provisions. Severance applies when some parts of the proposal or provision are determined to be outside the duty to bargain or contrary to law.

(i) *Written allegation concerning the duty to bargain* means an agency allegation that the duty to bargain in good faith does not extend to a proposal.

§§ 2424.3–2424.9 [Reserved]

**Subpart B—Alternative Dispute Resolution; Requesting and Providing Allegations Concerning the Duty To Bargain**

**§ 2424.10 Collaboration and Alternative Dispute Resolution Program.**

Where an exclusive representative and an agency are unable to resolve disputes that arise under this part, they may request assistance from the Collaboration and Alternative Dispute Resolution Program (CADR). Upon request, and as agreed upon by the parties, CADR representatives will attempt to assist the parties to resolve these disputes. Parties seeking information or assistance under this part may call or write the CADR Office at (202) 482-6503, 607 14th Street, NW., Washington, D.C. 20424-001. A brief summary of CADR activities is available on the Internet at [www.flra.gov](http://www.flra.gov).

**§ 2424.11 Requesting and providing written allegations concerning the duty to bargain.**

(a) *General*. An exclusive representative may file a petition for review after receiving a written allegation concerning the duty to bargain from the agency. An exclusive representative

also may file a petition for review if it requests that the agency provide it with a written allegation concerning the duty to bargain and the agency does not respond to the request within ten (10) days.

(b) *Agency allegation in response to request.* The agency's allegation in response to the exclusive representative's request must be in writing and must be served in accord with § 2424.2(g).

(c) *Unrequested agency allegation.* If an agency provides an exclusive representative with an unrequested written allegation concerning the duty to bargain, then the exclusive representative may either file a petition for review under this part, or continue to bargain and subsequently request in writing a written allegation concerning the duty to bargain, if necessary.

#### §§ 2424.12-2424.19 [Reserved]

### Subpart C—Filing and Responding to a Petition for Review; Conferences

#### § 2424.20 Who may file a petition for review.

A petition for review may be filed by an exclusive representative that is a party to the negotiations.

#### § 2424.21 Time limits for filing a petition for review.

(a) A petition for review must be filed within fifteen (15) days after the date of service of either:

(1) An agency's written allegation that the exclusive representative's proposal is not within the duty to bargain, or

(2) An agency head's disapproval of a provision.

(b) If the agency has not served a written allegation on the exclusive representative within ten (10) days after the agency's principal bargaining representative has received a written request for such allegation, as provided in § 2424.11(a), then the petition may be filed at any time.

#### § 2424.22 Exclusive representative's petition for review; purpose; content; severance; service.

(a) *Purpose.* The purpose of a petition for review is to initiate a negotiability

proceeding and provide the agency with notice that the exclusive representative requests a decision from the Authority that a proposal or provision is within the duty to bargain or not contrary to law, respectively. As more fully explained in paragraph (b) of this section, the exclusive representative is required in the petition for review to, among other things, inform the Authority of the exact wording and meaning of the proposal or provision as well as how it is intended to operate, explain technical or unusual terms, and provide copies of materials that support the exclusive representative's position.

(b) *Content.* A petition for review must be filed on a form provided by the Authority for that purpose, or in a substantially similar format. It must be dated and include the following:

(1) The exact wording and explanation of the meaning of the proposal or provision, including an explanation of special terms or phrases, technical language, or other words that are not in common usage, as well as how the proposal or provision is intended to work;

(2) Specific citation to any law, rule, regulation, section of a collective bargaining agreement, or other authority relied on by the exclusive representative in its argument or referenced in the proposal or provision, and a copy of any such material that is not easily available to the Authority;

(3) A statement as to whether the proposal or provision is also involved in an unfair labor practice charge under part 2423 of this subchapter, a grievance pursuant to the parties' negotiated grievance procedure, or an impasse procedure under part 2470 of this subchapter, and whether any other petition for review has been filed concerning a proposal or provision arising from the same bargaining or the same agency head review;

(4) Any request for a hearing before the Authority and the reasons supporting such request; and

(5) A table of contents and a table of legal authorities cited, if the petition exceeds 25 double-spaced pages in length.

(c) *Severance.* The exclusive representative may, but is not required to,

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include in the petition for review a statement as to whether it requests severance of a proposal or provision. If severance is requested in the petition for review, then the exclusive representative must support its request with an explanation of how each severed portion of the proposal or provision may stand alone, and how such severed portion would operate. The explanation and argument in support of the severed portion(s) must meet the same requirements for information set forth in paragraph (b) of this section.

(d) *Service.* The petition for review, including all attachments, must be served in accord with § 2424.2(g).

## § 2424.23 Post-petition conferences; conduct and record.

(a) *Timing of post-petition conference.* On receipt of a petition for review involving a proposal or a provision, a representative of the FLRA will, where appropriate, schedule a post-petition conference to be conducted by telephone or in person. All reasonable efforts will be made to schedule and conduct the conference within ten (10) days after receipt of the petition for review.

(b) *Conduct of conference.* The post-petition conference will be conducted with representatives of the exclusive representative and the agency, who must be prepared and authorized to discuss, clarify and resolve matters including the following:

(1) The meaning of the proposal or provision in dispute;

(2) Any disputed factual issue(s);

(3) Negotiability dispute objections and bargaining obligation claims regarding the proposal or provision;

(4) Whether the proposal or provision is also involved in an unfair labor practice charge under part 2423 of this subchapter, in a grievance under the parties' negotiated grievance procedure, or an impasse procedure under part 2470 of this subchapter; and

(5) Whether an extension of the time limits for filing the agency's statement of position and any subsequent filings is requested. The FLRA representative may, on determining that it will effectuate the purposes of the Federal Service Labor-Management Relations Stat-

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ute, 5 U.S.C. 7101 *et seq.*, and this part, extend such time limits.

(c) *Record of the conference.* At the post-petition conference, or after it has been completed, the representative of the FLRA will prepare and serve on the parties a written statement that includes whether the parties agree on the meaning of the disputed proposal or provision, the resolution of any disputed factual issues, and any other appropriate matters.

## § 2424.24 Agency's statement of position; purpose; time limits; content; severance; service.

(a) *Purpose.* The purpose of an agency statement of position is to inform the Authority and the exclusive representative why a proposal or provision is not within the duty to bargain or contrary to law, respectively. As more fully explained in paragraph (c) of this section, the agency is required in the statement of position to, among other things, set forth its understanding of the proposal or provision, state any disagreement with the facts, arguments, or meaning of the proposal or provision set forth in the exclusive representative's petition for review, and supply all arguments and authorities in support of its position.

(b) *Time limit for filing.* Unless the time limit for filing has been extended pursuant to § 2424.23 or part 2429 of this subchapter, the agency must file its statement of position within thirty (30) days after the date the head of the agency receives a copy of the petition for review.

(c) *Content.* The agency's statement of position must be on a form provided by the Authority for that purpose, or in a substantially similar format. It must be dated and must:

(1) Withdraw either:

(i) The allegation that the duty to bargain in good faith does not extend to the exclusive representative's proposal, or

(ii) The disapproval of the provision under 5 U.S.C. 7114(c); or

(2) Set forth in full the agency's position on any matters relevant to the petition that it wishes the Authority to consider in reaching its decision, including a statement of the arguments

and authorities supporting any bargaining obligation or negotiability claims, any disagreement with claims made by the exclusive representative in the petition for review, specific citation to any law, rule, regulation, section of a collective bargaining agreement, or other authority relied on by the agency, and a copy of any such material that is not easily available to the Authority. The statement of position must also include the following:

(i) If different from the exclusive representative's position, an explanation of the meaning the agency attributes to the proposal or provision and the reasons for disagreeing with the exclusive representative's explanation of meaning;

(ii) If different from the exclusive representative's position, an explanation of how the proposal or provision would work, and the reasons for disagreeing with the exclusive representative's explanation;

(3) A statement as to whether the proposal or provision is also involved in an unfair labor practice charge under part 2423 of this subchapter, a grievance pursuant to the parties' negotiated grievance procedure, or an impasse procedure under part 2470 of this subchapter, and whether any other petition for review has been filed concerning a proposal or provision arising from the same bargaining or the same agency head review;

(4) Any request for a hearing before the Authority and the reasons supporting such request; and

(5) A table of contents and a table of legal authorities cited, if the statement of position exceeds 25 double-spaced pages in length.

(d) *Severance.* If the exclusive representative has requested severance in the petition for review, and if the agency opposes the exclusive representative's request for severance, then the agency must explain with specificity why severance is not appropriate.

(e) *Service.* A copy of the agency's statement of position, including all attachments, must be served in accord with § 2424.2(g).

**§ 2424.25 Response of the exclusive representative; purpose; time limits; content; severance; service.**

(a) *Purpose.* The purpose of the exclusive representative's response is to inform the Authority and the agency why, despite the agency's arguments in its statement of position, the proposal or provision is within the duty to bargain or not contrary to law, respectively, and whether the union disagrees with any facts or arguments in the agency's statement of position. As more fully explained in paragraph (c) of this section, the exclusive representative is required in its response to, among other things, state why the proposal or provision does not conflict with any law, or why it falls within an exception to management rights, including permissive subjects under 5 U.S.C. 7106(b)(1), and procedures and appropriate arrangements under section 7106(b) (2) and (3). Another purpose of the response is to permit the exclusive representative to request the Authority to sever portions of the proposal or provision and to explain why and how it can be done.

(b) *Time limit for filing.* Unless the time limit for filing has been extended pursuant to § 2424.23 or part 2429 of this subchapter, within fifteen (15) days after the date the exclusive representative receives a copy of an agency's statement of position, the exclusive representative must file a response.

(c) *Content.* The response must be on a form provided by the Authority for that purpose, or in a substantially similar format. With the exception of a request for severance pursuant to paragraph (d) of this section, the exclusive representative's response is specifically limited to the matters raised in the agency's statement of position. The response must be dated and must include the following:

(1) Any disagreement with the agency's bargaining obligation or negotiability claims. The exclusive representative must state the arguments and authorities supporting its opposition to any agency argument, and must include specific citation to any law, rule, regulation, section of a collective bargaining agreement, or other authority

relied on by the exclusive representative, and provide a copy of any such material that is not easily available to the Authority. The exclusive representative is not required to repeat arguments made in the petition for review. If not included in the petition for review, the exclusive representative must state the arguments and authorities supporting any assertion that the proposal or provision does not affect a management right under 5 U.S.C. 7106(a), and any assertion that an exception to management rights applies, including:

- (i) Whether and why the proposal or provision concerns a matter negotiable at the election of the agency under 5 U.S.C. 7106(b)(1);
- (ii) Whether and why the proposal or provision constitutes a negotiable procedure as set forth in 5 U.S.C. 7106(b)(2);
- (iii) Whether and why the proposal or provision constitutes an appropriate arrangement as set forth in 5 U.S.C. 7106(b)(3); and
- (iv) Whether and why the proposal or provision enforces an “applicable law,” within the meaning of 5 U.S.C. 7106(a)(2).

(2) Any allegation that agency rules or regulations relied on in the agency’s statement of position violate applicable law, rule, regulation or appropriate authority outside the agency; that the rules or regulations were not issued by the agency or by any primary national subdivision of the agency, or otherwise are not applicable to bar negotiations under 5 U.S.C. 7117(a)(3); or that no compelling need exists for the rules or regulations to bar negotiations.

(3) A table of contents and a table of legal authorities cited if the response to an agency statement of position exceeds 25 double-spaced pages in length.

(d) *Severance*. If not requested in the petition for review, or if the exclusive representative wishes to modify the request in the petition for review, the exclusive representative may request severance in its response. The exclusive representative must support its request with an explanation of how the severed portion(s) of the proposal or provision may stand alone, and how such severed portion(s) would operate. The exclusive representative also must respond to

any agency arguments regarding severance made in the agency’s statement of position. The explanation and argument in support of the severed portion(s) must meet the same requirements for specific information set forth in paragraph (c) of this section.

(e) *Service*. A copy of the response of the exclusive representative, including all attachments, must be served in accord with § 2424.2(g).

**§ 2424.26 Agency’s reply; purpose; time limits; content; service.**

(a) *Purpose*. The purpose of the agency’s reply is to inform the Authority and the exclusive representative whether and why it disagrees with any facts or arguments made for the first time in the exclusive representative’s response. As more fully explained in paragraph (c) of this section, the Agency is required in the reply to, among other things, provide the reasons why the proposal or provision does not fit within any exceptions to management rights that were asserted by the exclusive representative in its response, and to explain why severance of the proposal or provision is not appropriate.

(b) *Time limit for filing*. Unless the time limit for filing has been extended pursuant to § 2424.23 or part 2429 of this subchapter, within fifteen (15) days after the date the agency receives a copy of the exclusive representative’s response to the agency’s statement of position, the agency may file a reply.

(c) *Content*. The reply must be on a form provided by the Authority for that purpose, or in a substantially similar format. The agency’s reply is specifically limited to the matters raised for the first time in the exclusive representative’s response. The agency’s reply must state the arguments and authorities supporting its reply, cite with specificity any law, rule, regulation, section of a collective bargaining agreement, or other authority relied on, and provide a copy of any material that is not easily available to the Authority. The agency is not required to repeat arguments made in its statement of position. The agency’s reply must be dated and must include the following:

- (1) Any disagreement with the exclusive representative’s assertion that an

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exception to management rights applies, including:

(i) Whether and why the proposal or provision concerns a matter included in section 7106(b)(1) of the Federal Service Labor-Management Relations Statute;

(ii) Whether and why the proposal or provision does not constitute a negotiable procedure as set forth in section 7106(b)(2) of the Federal Service Labor-Management Relations Statute;

(iii) Whether and why the proposal or provision does not constitute an appropriate arrangement as set forth in section 7106(b)(3) of the Federal Service Labor-Management Relations Statute;

(iv) Whether and why the proposal or provision does not enforce an “applicable law,” within the meaning of section 7106(a)(2) of the Federal Service Labor-Management Relations Statute;

(2) Any arguments in reply to an exclusive representative’s allegation in its response that agency rules or regulations relied on in the agency’s statement of position violate applicable law, rule, regulation or appropriate authority outside the agency; that the rules or regulations were not issued by the agency or by any primary national subdivision of the agency, or otherwise are not applicable to bar negotiations under 5 U.S.C. 7117(a)(3); or that no compelling need exists for the rules or regulations to bar negotiations; and

(3) A table of contents and a table of legal authorities cited, if the agency’s reply to an exclusive representative’s response exceeds 25 double-spaced pages in length.

(d) *Severance.* If the exclusive representative requests severance for the first time in its response, or if the request for severance in an exclusive representative’s response differs from the request in its petition for review, and if the agency opposes the exclusive representative’s request for severance, then the agency must explain with specificity why severance is not appropriate.

(e) *Service.* A copy of the agency’s reply, including all attachments, must be served in accord with § 2424.2(g).

### § 2424.27 Additional submissions to the Authority.

The Authority will not consider any submission filed by any party other than those authorized under this part, provided however that the Authority may, in its discretion, grant permission to file an additional submission based on a written request showing extraordinary circumstances by any party. The additional submission must be filed either with the written request or no later than five (5) days after receipt of the Authority’s order granting the request. Any opposition to the additional submission must be filed within fifteen (15) days after the date of the receipt of the additional submission. All documents filed under this section must be served in accord with § 2424.2(g).

### §§ 2424.28–2424.29 [Reserved]

## Subpart D—Processing a Petition for Review

### § 2424.30 Procedure through which the petition for review will be resolved.

(a) *Exclusive representative has filed related unfair labor practice charge or grievance alleging an unfair labor practice.* Except for proposals or provisions that are the subject of an agency’s compelling need claim under 5 U.S.C. 7117(a)(2), where an exclusive representative files an unfair labor practice charge pursuant to part 2423 of this subchapter or a grievance alleging an unfair labor practice under the parties’ negotiated grievance procedure, and the charge or grievance concerns issues directly related to the petition for review filed pursuant to this part, the Authority will dismiss the petition for review. The dismissal will be without prejudice to the right of the exclusive representative to refile the petition for review after the unfair labor practice charge or grievance has been resolved administratively, including resolution pursuant to an arbitration award that has become final and binding. No later than thirty (30) days after the date on which the unfair labor practice charge or grievance is resolved administratively, the exclusive representative

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may refile the petition for review, and the Authority will determine whether resolution of the petition is still required.

(b) *Exclusive representative has not filed related unfair labor practice charge or grievance alleging an unfair labor practice.* Where an exclusive representative files only a petition for review under this part, the petition will be processed as follows:

(1) *No bargaining obligation dispute exists.* Where there is no bargaining obligation dispute, the Authority will resolve the petition for review under the procedures of this part.

(2) *A bargaining obligation dispute exists.* Where a bargaining obligation dispute exists in addition to the negotiability dispute, the Authority will inform the exclusive representative of any opportunity to file an unfair labor practice charge pursuant to part 2423 of this subchapter or a grievance under the parties' negotiated grievance procedure and, where the exclusive representative pursues either of these courses, proceed in accord with paragraph (a) of this section. If the exclusive representative does not file an unfair labor practice charge or grievance, the Authority will proceed to resolve all disputes necessary for disposition of the petition unless, in its discretion, the Authority determines that resolving all disputes is not appropriate because, for example, resolution of the bargaining obligation dispute under this part would unduly delay resolution of the negotiability dispute, or the procedures in another, available administrative forum are better suited to resolve the bargaining obligation dispute.

### § 2424.31 Resolution of disputed issues of material fact; hearings.

When necessary to resolve disputed issues of material fact in a negotiability or bargaining obligation dispute, or when it would otherwise aid in decision making, the Authority, or its designated representative, may, as appropriate:

(a) Direct the parties to provide specific documentary evidence;

(b) Direct the parties to provide answers to specific factual questions;

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(c) Refer the matter to a hearing pursuant to 5 U.S.C. 7117(b)(3) and/or (c)(5); or

(d) Take any other appropriate action.

### § 2424.32 Parties' responsibilities; failure to raise, support, and/or respond to arguments; failure to participate in conferences and/or respond to Authority orders.

(a) *Responsibilities of the exclusive representative.* The exclusive representative has the burden of raising and supporting arguments that the proposal or provision is within the duty to bargain, within the duty to bargain at the agency's election, or not contrary to law, respectively, and, where applicable, why severance is appropriate.

(b) *Responsibilities of the agency.* The agency has the burden of raising and supporting arguments that the proposal or provision is outside the duty to bargain or contrary to law, respectively, and, where applicable, why severance is not appropriate.

(c) *Failure to raise, support, and respond to arguments.* (1) Failure to raise and support an argument will, where appropriate, be deemed a waiver of such argument. Absent good cause:

(i) Arguments that could have been but were not raised by an exclusive representative in the petition for review, or made in its response to the agency's statement of position, may not be made in this or any other proceeding; and

(ii) Arguments that could have been but were not raised by an agency in the statement of position, or made in its reply to the exclusive representative's response, may not be raised in this or any other proceeding.

(2) Failure to respond to an argument or assertion raised by the other party will, where appropriate, be deemed a concession to such argument or assertion.

(d) *Failure to participate in conferences; failure to respond to Authority orders.* Where a party fails to participate in a post-petition conference pursuant to § 2424.23, a direction or proceeding under § 2424.31, or otherwise fails to provide timely or responsive information pursuant to an Authority order, including an Authority procedural order directing the correction of



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technical deficiencies in filing, the Authority may, in addition to those actions set forth in paragraph (c) of this section, take any other action that, in the Authority's discretion, is deemed appropriate, including dismissal of the petition for review, with or without prejudice to the exclusive representative's refiling of the petition for review, and granting the petition for review and directing bargaining and/or rescission of an agency head disapproval under 5 U.S.C. 7114(c), with or without conditions.

### §§ 2424.33–2424.39 [Reserved]

## Subpart E—Decision and Order

### § 2424.40 Authority decision and order.

(a) *Issuance.* Subject to the requirements of this part, the Authority will expedite proceedings under this part to the extent practicable and will issue to the exclusive representative and to the agency a written decision, explaining the specific reasons for the decision, at the earliest practicable date. The decision will include an order, as provided in paragraphs (b) and (c) of this section, but, with the exception of an order to bargain, such order will not include remedies that could be obtained in an unfair labor practice proceeding under 5 U.S.C. 7118(a)(7).

(b) *Cases involving proposals.* If the Authority finds that the duty to bargain extends to the proposal, or any severable part of the proposal, then the Authority will order the agency to bargain on request concerning the proposal. If the Authority finds that the duty to bargain does not extend to the proposal, then the Authority will dismiss the petition for review. If the Authority finds that the proposal is bargainable only at the election of the agency, then the Authority will so state. If the Authority resolves a negotiability dispute by finding that a proposal is within the duty to bargain, but there are unresolved bargaining obligation dispute claims, then the Authority will order the agency to bargain on request in the event its bargaining obligation claims are resolved in a manner that requires bargaining.

(c) *Cases involving provisions.* If the Authority finds that a provision, or

any severable part thereof, is not contrary to law, rule or regulation, or is bargainable at the election of the agency, the Authority will direct the agency to rescind its disapproval of such provision in whole or in part as appropriate. If the Authority finds that a provision is contrary to law, rule, or regulation, the Authority will dismiss the petition for review as to that provision.

### § 2424.41 Compliance.

The exclusive representative may report to the appropriate Regional Director an agency's failure to comply with an order, issued in accordance with § 2424.40, that the agency must upon request (or as otherwise agreed to by the parties) bargain concerning the proposal or that the agency must rescind its disapproval of a provision. The exclusive representative must report such failure within a reasonable period of time following expiration of the 60-day period under 5 U.S.C. 7123(a), which begins on the date of issuance of the Authority order. If, on referral from the Regional Director, the Authority finds such a failure to comply with its order, the Authority will take whatever action it deems necessary to secure compliance with its order, including enforcement under 5 U.S.C. 7123(b).

### §§ 2424.42–2424.49 [Reserved]

## Subpart F—Criteria for Determining Compelling Need for Agency Rules and Regulations

### § 2424.50 Illustrative criteria.

A compelling need exists for an agency rule or regulation concerning any condition of employment when the agency demonstrates that the rule or regulation meets one or more of the following illustrative criteria:

(a) The rule or regulation is essential, as distinguished from helpful or desirable, to the accomplishment of the mission or the execution of functions of the agency or primary national subdivision in a manner that is consistent with the requirements of an effective and efficient government.

(b) The rule or regulation is necessary to ensure the maintenance of basic merit principles.

(c) The rule or regulation implements a mandate to the agency or primary national subdivision under law or other outside authority, which implementation is essentially nondiscretionary in nature.

§§ 2424.51–2424.59 [Reserved]

## PART 2425—REVIEW OF ARBITRATION AWARDS

Sec.

2425.1 Who may file an exception; time limits for filing; opposition; service.

2425.2 Content of exception.

2425.3 Grounds for review.

2425.4 Authority decision.

AUTHORITY: 5 U.S.C. 7134.

### § 2425.1 Who may file an exception; time limits for filing; opposition; service.

(a) Either party to arbitration under the provisions of chapter 71 of title 5 of the United States Code may file an exception to an arbitrator's award rendered pursuant to the arbitration.

(b) The time limit for filing an exception to an arbitration award is thirty (30) days beginning on the date the award is served on the filing party.

(c) An opposition to the exception may be filed by a party within thirty (30) days after the date of service of the exception.

(d) A copy of the exception and any opposition shall be served on the other party.

[45 FR 3513, Jan. 17, 1980, as amended at 46 FR 40675, Aug. 11, 1981; 49 FR 22623, May 31, 1984]

### § 2425.2 Content of exception.

An exception must be a dated, self-contained document which sets forth in full:

(a) A statement of the grounds on which review is requested;

(b) Evidence or rulings bearing on the issues before the Authority;

(c) Arguments in support of the stated grounds, together with specific reference to the pertinent documents and citations of authorities; and

(d) A legible copy of the award of the arbitrator and legible copies of other pertinent documents.

(e) The name and address of the arbitrator.

[45 FR 3513, Jan. 17, 1986, as amended at 51 FR 45755, Dec. 22, 1986]

### § 2425.3 Grounds for review.

(a) The Authority will review an arbitrator's award to which an exception has been filed to determine if the award is deficient—

(1) Because it is contrary to any law, rule or regulation; or

(2) On other grounds similar to those applied by Federal courts in private sector labor-management relations.

(b) The Authority will not consider an exception with respect to an award relating to:

(1) An action based on unacceptable performance covered under 5 U.S.C. 4303;

(2) A removal, suspension for more than fourteen (14) days, reduction in grade, reduction in pay, or furlough of thirty (30) days or less covered under 5 U.S.C. 7512; or

(3) Matters similar to those covered under 5 U.S.C. 4303 and 5 U.S.C. 7512 which arise under other personnel systems.

[45 FR 3513, Jan. 17, 1980]

### § 2425.4 Authority decision.

The Authority shall issue its decision and order taking such action and making such recommendations concerning the award as it considers necessary, consistent with applicable laws, rules, or regulations.

[45 FR 3513, Jan. 17, 1980]

## PART 2426—NATIONAL CONSULTATION RIGHTS AND CONSULTATION RIGHTS ON GOVERNMENT-WIDE RULES OR REGULATIONS

### Subpart A—National Consultation Rights

Sec.

2426.1 Requesting; granting; criteria.

2426.2 Requests; petition and procedures for determination of eligibility for national consultation rights.

2426.3 Obligation to consult.